Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Windstream Communications, Inc. ("Windstream") and Frontier Communications Corp. ("Frontier") (together, the "Petitioners"), pursuant to Section 1.429 of the Commission's rules,[1] hereby seek clarification and/or reconsideration with regard to three aspects of the Commission's recent *Universal Service/Intercarrier Compensation Transformation Order* (the "*Order*").[2]

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[1] 47 C.F.R. § 1.429.

[2] *Connect America Fund* et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*").

***First*,** the Commission should clarify that Connect America Fund ("CAF") Phase I support will be distributed consistent with the framework proposed by six price cap carriers in this proceeding. In particular, the price cap carriers proposed a methodology whereby a regression analysis would be applied to the entire pool of high-cost price cap funding, but the Commission would hold carriers harmless when distributing support. While the *Order* claims to adopt the terms of the proposal, important issues remain unaddressed, leaving ambiguities regarding how funding will be allocated. The Commission should confirm that it intended to adopt the approach proposed, as described below, to ensure that support is distributed equitably and in a manner most consistent with the *Order*'s broadband deployment goals.

***Second*,** the Commission should reconsider its "one location per $775" Phase I deployment requirement and replace it with a more targeted performance obligation. The *Order* would require electing price cap carriers to deploy broadband to one currently unserved location for every $775 of Phase I incremental support. The *Order* purports to justify this figure by citing to cost estimates for Broadband Initiative Plan ("BIP") projects, the Omnibus Broadband Initiative ("OBI") cost model, and the cost model submitted with the America's Broadband Connectivity Plan ("ABC Plan"). Each of these comparisons, however, is inapt, for reasons described in detail below. The actual cost of deployment to still-unserved areas is likely to be well above $775 per location in most cases. Thus, the current requirement would undercut the Commission's short-term broadband deployment objectives. Instead, the Commission should adopt performance obligations that reflect the cost conditions in individual price cap carriers' service territories and recognize carrier needs to upgrade service in *under*served areas as well as unserved areas.

***Third*,** the Commission should confirm that it did not intend to displace intrastate originating access rates for PSTN-originated calls that are terminated over VoIP facilities.

Consistent with the Commission's expressed intent to comport with the ABC Plan, Section XII.C.3 of the *Order* explicitly declines to reduce both interstate and intrastate originating access for calls that originate on the PSTN, pending the future adoption of a transition process for these rates following a further rulemaking. The discussion in Section XIV.C of the *Order* on prospective intercarrier compensation obligations for VoIP-PSTN traffic should not be read to undermine this originating access regime by flash-cutting intrastate originating rates for PSTN-originated calls to interstate levels when those calls are terminated by another carrier as VoIP. If the Commission intended such a reading, it should reconsider this decision, which would be contrary to the Commission's goal of creating "measured transitions" and would invite new arbitrage schemes where the Commission has vowed to eliminate them.

I. THE COMMISSION SHOULD ENSURE THAT CAF PHASE I INCREMENTAL SUPPORT IS ALLOCATED AMONG CARRIERS IN A MANNER CONSISTENT WITH THE JOINT RECOMMENDATION PREVIOUSLY PRESENTED BY SIX PRICE CAP CARRIERS.

In its discussion of the CAF Phase I incremental support mechanism adopted to promote near-term broadband deployment by price cap LECs, the Commission stated that the new mechanism was "based on a proposal in the record from several carriers."[3] As the Bureau translates this general guidance into specific Commission action, the Petitioners urge the Commission to ensure that implementation of the Phase I support mechanism is consistent with the specific terms of the cited pleading and the oral presentation made at the related *ex parte*

[3] *Id.* at ¶ 134. The *Order* states that "for the purposes of CAF Phase I, [it] treat[s] as price cap carriers the rate-of-return operating companies that are affiliated with holding companies for which the majority of access lines are regulated under price caps." *Id.* at ¶ 129. Accordingly, Petitioners use the term "price cap carriers" herein to include such rate-of-return companies.

meeting. The Commission, in particular, should clarify that it intended to structure the Phase I support mechanism consistent with the discussion below.

On October 19, 2011, representatives of the Petitioners, along with representatives of AT&T, Verizon, CenturyLink, Fairpoint, and USTelecom, met with Commission staff to discuss the structure of an interim CAF governing support to price cap carriers. On October 21, AT&T filed an *ex parte* letter reporting on the meeting and setting out the parties' proposal ("October 21 Letter").[4]

The proposal made in the October 21 Letter—called the "Proposed Framework" in this Petition—was that support under the Phase I price cap mechanism would be computed as follows:

Proposed Framework

1. The Commission establishes an initial "budget" by adding the incremental support amount ($300 million) to the preexisting support amount for price cap carriers (approximately $1 billion), for a total of approximately $1.3 billion.[5]

2. The Commission uses the regression analysis discussed in paragraph 134 of the *Order* to establish predicted per-location costs for each wire center included in the analysis, then ranks them from highest cost to lowest cost.[6]

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[4] Letter from Cathy Carpino, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 21, 2011), *available at* http://fjallfoss.fcc.gov/ecfs/document/view?id=7021716846 ("October 21 Letter").

[5] *See id.* ("[T]he Commission should combine price cap carriers' existing high-cost support amounts (which total approximately $1 billion) together with the new $300 million for purposes of performing the analysis."). Petitioners have been unable to verify appropriate, readily available, and consistent data that may be used for Alaska, the Mariana Islands, Puerto Rico, and the Virgin Islands. For this reason, this Petition assumes that budget calculations and Phase I incremental support will not address wire centers within these areas. Preexisting support for price cap carriers eligible for Phase I incremental support is based upon Universal Service Administrative Company Appendices for fourth quarter 2011 annualized support.

[6] *See, e.g.*, *id.* at 1 (noting understanding that incremental support "will be allocated among [price cap] carriers through the application of a regression analysis that uses the Commission's

(continued on next page)

3. The Commission provisionally establishes a "funding threshold." The funding threshold is the figure at which the Commission could, using the total $1.3 billion budget, provide support to all wire centers with regression-predicted costs at or above the funding threshold in an amount equal to the difference between the wire center's predicted per-location cost and the funding threshold, multiplied by the number of locations in the wire center.[7]

4. The Commission provisionally assigns total support to each carrier in the amount computed as above. To the extent any price cap carrier's total assigned support is lower than the carrier's legacy high-cost funding under pre-existing mechanisms, The Commission removes that carrier's wire centers from the ranked list of wire centers, and removes its pre-existing funding from the "budget."[8]

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existing HCPM"). As noted in the *Order*, *see Order* at ¶ 131, n.208, the regression analysis was originally set forth in letters filed by the two Petitioners here. *See* Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.* (filed June 30, 2011); Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.* (filed July 26, 2011).

[7] To take a highly simplified example: The appropriate funding threshold would be $100 if the total budget were $700; there were just four wire centers with predicted per-location costs of $200, $140, $60, and $20 each; and each wire center had five locations. The first wire center would be assigned support of $100 per location (for a total of $500), and the second wire center would be assigned $40 per location (for a total of $200), exhausting the $700 budget. The other wire centers experience predicted costs below the threshold, and thus are not entitled to support. Of course, the ideal scenario would be one in which the funding threshold accurately reflected the point beyond which end-user recovery becomes infeasible and government support is appropriate. As discussed below, the Proposed Framework results in a benchmark that will be suitable from this perspective during the transition to CAF Phase II.

[8] The effect of this step is to "hold harmless" any price cap carrier that would otherwise wind up with total Phase I support less than the support it would be entitled under pre-existing mechanisms. Thus, as the signatories to the October 21 Letter put it, the Commission would run the regression mentioned in step 2 with respect to the entire pot of funding (the legacy $1 billion plus the new $300 million), but it would then "use this information"—that is, the results of the analysis—"for the sole purpose of allocating the $300 million in incremental support among the price cap carriers…." October 21 Letter at 1-2. Ultimately, then, "[t]he Commission [would] use the results of the regression analysis exclusively to determine the *incremental* support price cap carriers would receive at the holding company level." *Id.* at 2 (emphasis in original). *See also id.* ("The Commission should not use the results of the regression analysis to reallocate *existing* high cost support.") (emphasis in original). As the October 21 Letter stated, an interim mechanism that threatened to *reduce* total support for any carrier "would be extraordinarily disruptive to the affected carriers and state commissions." *Id.*

5. The Commission repeats steps 3 and 4 using the revised wire-center list and revised budget. After the second run, to the extent any price cap carrier's revised total assigned funding (assessed at the holding-company level) is now lower than the carrier's legacy high-cost funding under pre-existing mechanisms, the Commission removes that carrier's wire centers from the ranked list of wire centers, removes its pre-existing funding from the "budget," and repeats steps 3 and 4 again, until all remaining carriers are "assigned" total support levels at least as great as their preexisting support.

6. Carriers removed from the process at step 4 (during either the initial run or a subsequent run) are "held harmless"—*i.e.*, assigned support under the Phase I mechanism equal to the amount received under the legacy mechanisms in 2011. Other price cap carriers receive incremental support from the $300 million pool on the basis of costs within each wire center whose predicted per-location costs under the regression analysis exceed the funding threshold. Support for each affected wire center equals the difference between the predicted per-location cost and the funding threshold, multiplied by the number of locations in the wire center.

In short, the October 21 Letter proposed a system whereby the regression analysis would be applied to the entire pool of high-cost price cap funding but the Commission then would hold carriers harmless (*i.e.*, immune from support reductions in Phase I) such that only the incremental $300 million was distributed according to the regression's results. The letter referred to this approach as the performance of an "as if" calculation[9]—a measure comparable to the *Order*'s approach toward calculating appropriate interstate rates on the basis of legacy interstate access support, as if this support continued at 2011 levels.[10] As discussed below,

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[9] *See, e.g.*, *id.* at 2 ("Indeed, significantly reallocating $1 billion dollars in existing support for a one-year period violates the Commission's obligations to establish universal service support mechanisms that are 'specific, predictable and sufficient.' 47 U.S.C. § 254(b)(5). Instead, the Commission should perform an 'as if' calculation that would leave untouched existing high-cost support in this interim phase of the CAF.").

[10] *See Order* at ¶ 152 (stipulating that the amount of price cap carriers' "frozen high cost support equal to the amount of IAS for which each carrier was eligible in 2011 as being received under IAS … will be treated as IAS" for purposes "including, but not limited to," the "purposes of calculating interstate rates").

Petitioners believed and continue to believe that this approach offers the best means for allocating funding made available under the Phase I incremental support mechanism.

The Commission seems to recognize the public policy benefits of this approach when stating its intention to adopt the proposals made in the October 21 Letter.[11] Moreover, section 54.312(b)(1) of the Commission's rules appears to be consistent with this intention:

> For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's cost model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.[12]

Language in the accompanying *Order*, to the extent it describes the new mechanism, also seems to comport with the October 21 Letter.[13]

This all, thus far, is consistent with the October 21 Letter. However, neither the *Order*'s text nor the new rule specifically answers the critical question of how the funding threshold will

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[11] *See id.* at ¶ 134 & n.214 (stating that "[t]his simplified, interim approach is based on a proposal in the record from several carriers" and citing October 21 Letter).

[12] *Id.* at Appendix A, § 54.312(b)(1).

[13] For example, the *Order* states that "a forward-looking cost estimate will be generated for each wire center served by a price cap carrier," using the equation placed into the record by Windstream on June 30, 2011. *Id.* at ¶ 134 & n.216. Then, "[t]he output of the cost-estimation function will be converted into dollars and then further converted into a per-location cost in the wire center. The resulting per-location cost for each wire center will be compared to a funding threshold, which … will be determined by our budget constraint. Support will be calculated based on the wire centers where the cost for the wire center exceeds the funding threshold. Specifically, the amount by which the per-location cost exceeds the funding threshold will be multiplied by the total number of household and business locations in the wire center." *Id.* at ¶ 135.

be established—that is, whether the regression will be run (1) only against the incremental $300 million or (2) against the entire $1.3 billion available, subject to the "hold harmless" mechanism as discussed above and in the October 21 Letter. Some parties, therefore, may try to argue that the *Order could* be read to contemplate an "Alternative Framework," under which the Commission establishes a "budget" including only the incremental $300 million, adopts a funding threshold based upon costs to serve only the very highest-cost wire centers, and then distributes funding to the carriers whose service areas include the small subset of highest-cost wire centers. Such an approach would be inconsistent with the October 21 Letter and should not be adopted.

The distinction between the two possible approaches to allocating Phase I incremental support among price cap carriers is significant. As an initial matter, Petitioners emphasize that both the Proposed Framework and the Alternative Framework would ensure that no price cap carrier would be worse off under the CAF Phase I mechanism than under the legacy mechanisms.[14] However, the two approaches could differ markedly in how they allocate the incremental $300 million. Specifically, because it involves a far smaller "budget" and would distribute funding based upon the costs of a relatively small number of the very highest-cost wire centers, the Alternative Framework would necessarily result in a far higher funding threshold. As the October 21 Letter put it:

> Including price cap carriers' existing high-cost support amounts in the regression analysis will have the benefit of identifying the

[14] As discussed above, the Proposed Framework would ensure this by applying the "hold harmless" mechanism that removed from the framework any carrier that would otherwise have experienced a reduction in support. The Alternative Framework would ensure this by ignoring legacy support altogether and focusing only on the incremental $300 million pool in allocating new support.

> relative cost conditions in more of the high-cost areas that are uneconomic to serve, and the Commission would use this information for the sole purpose of allocating the $300 million in incremental support among the price cap carriers in a consistent manner. In contrast, limiting the regression analysis simply to the new $300 million would limit the identified areas to only a small subset of those that are uneconomic to serve.[15]

Consequently, the Alternative Framework would permit certain carriers that happen to have a high proportion of extremely high-cost wire centers to reap the great majority of incremental funding under the Alternative Framework. Analysis performed by the Petitioners indicates that, under the Alternative Framework just 0.5 percent of all locations, residing within only 12 percent of all wire centers, would be relevant to the distribution of incremental support.[16] In contrast, the Proposed Framework would be far more equitable, spreading incremental support among carriers based upon a more complete set of wire centers that are uneconomic to serve absent support, rather than an extremely high-cost fraction of those wire centers.

There is no legitimate rationale for allocating incremental support according to the Alternative Framework. As the Commission has made clear (and as Petitioners believe is appropriate), the mechanism discussed herein will be used to calculate support received, but the wire centers whose costs govern the calculations will *not* be the wire centers actually supported with the funding. Indeed, the *Order* expressly notes the Commission's *hope* that Phase I support will be used to promote deployment in *lower-cost* unserved locations:

> We distribute support based on the costs of the highest-cost wire centers because the ultimate goal of our reforms is to ensure that all areas get broadband-capable networks, whether through the operation of the market or through support from USF . . . . At the

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[15] October 21 Letter at 1-2.

[16] The locations used to compute these figures are the same locations used to calculate the figures submitted with the October 21 Letter. *See id.* at Attachment.

> same time, to promote the most rapid expansion of broadband to as many households as possible, *we wish to encourage carriers to use the support in lower-cost areas where there is no private sector business case for deployment of broadband, to the extent carriers also serve such areas*.[17]

Thus, application of the Alternative Framework merely would result in an arbitrary windfall for price cap carriers whose service areas include a large proportion of extremely high-cost wire centers—a small subset of all wire centers that are uneconomic to serve absent support.

The Proposed Framework also is more consistent with the broader transition to CAF Phase II. The *Order* provides that, once the transitional phase is completed, the very highest-cost census blocks will receive support not through the CAF itself, but rather through the separate Remote Areas Fund, which contemplates that these locations will be served by satellite, fixed wireless, or other alternative platforms.[18] It would be particularly nonsensical to heavily favor certain providers for receipt of interim price cap support on the basis of costs for a relatively small number of service areas that they may never be expected to serve to a substantial degree, either in the short term or the long term.

Indeed, adopting the Proposed Framework will make it possible for the Commission to make great strides in rationalizing existing levels of high-cost universal service support in the near-term. Certain price cap carriers have been favored under the current mechanism due to legacy, irrational provisions that have nothing to do with cost conditions in their individual wire centers—for example, the High-Cost Loop mechanism employs study-area averaging, which

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[17] *Order* at ¶ 145 (emphasis added). *See also id.* at ¶ 139 ("For this interim program, we are not attempting to identify the precise cost of deploying broadband to any particular location. Instead, we are trying to identify an appropriate standard to spur immediate broadband deployment to as many unserved locations as possible, given our budget constraint.").

[18] *See generally id*. at ¶¶ 533-38.

favors smaller, rate-of-return carriers with smaller study areas, and High-Cost Model support only is awarded to 10 states based on statewide average cost per line, even though there are high-cost wire centers in all states.[19] The Proposed Framework would remedy these deficiencies by basing funding, for the first time ever, on an apples-to-apples targeted assessment of costs on a wire-center basis. Carrier support levels would be based on the number of wire centers served with per-location costs above a funding threshold of about $70, a threshold that fairly accurately reflects the limit of a carrier's ability to recover costs from its end users.[20] Moreover, the Proposed Framework would apply this threshold while holding carriers harmless (*i.e.*, ensuring that they receive no less high-cost support during CAF Phase I than they received in 2011 under the legacy mechanisms), thereby guarding against precipitous shifts in funding in the near term. In contrast, the Alternative Framework would do far less to address inequities in the existing regime, and could exacerbate those problems by targeting new funding at carriers who happen to serve the small subset of very-high-cost wire centers.

Thus, for the reasons discussed herein, the Commission should clarify that its discussion in paragraphs 133 through 136 of the *Order*, and new section 54.312(b)(1) of its rules, are

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[19] *See, e.g.,* Comments of Windstream Communications Inc., WC Docket No. 10-90, *et al.*, at 11 (April 18, 2011) (explaining why High-Cost Model mechanism leaves many wire centers in genuinely high-cost areas "grossly underfunded"); *id.* at 40 (discussing High-Cost Loop mechanism).

[20] The ABC Plan model assumed a cost benchmark equal to $80 per location within an individual census block. *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attachment 3, at 19 (filed July 29, 2011) (ABC Plan). The proximity of this figure to the funding threshold that likely would apply under the Proposed Framework (*i.e.*, an average cost benchmark of approximately $70 per location within an individual wire center) provides support for the Petitioners' contention that CAF Phase I would use a benchmark to determine funding levels that is in the reasonable range of the benchmark expected to be used in CAF Phase II for the same purpose.

intended to adopt the "Proposed Framework" detailed above, and not the "Alternative Framework" (or any other vision of the Phase I price cap mechanism).[21]

II. THE COMMISSION SHOULD RECONSIDER ITS "ONE LOCATION PER $775" PHASE I DEPLOYMENT REQUIREMENT AND REPLACE IT WITH A MORE TARGETED ACCOUNTABILITY MECHANISM.

The *Order* requires price cap carriers to deploy broadband to one currently unserved location for every $775 in incremental support they elect to receive under CAF Phase I.[22] This figure is based on faulty assumptions that severely understate the actual cost of deploying broadband to currently unserved locations. In fact, for many price cap carriers' service areas, there are very few, if any, currently unserved locations that could be addressed for $775 or less. Thus, if left in place, the $775 threshold will deter some carriers from accepting incremental support, seriously undermining the Commission's short-term broadband deployment objectives. The Commission should reconsider the threshold requirement and instead develop a more flexible mechanism that accounts for cost conditions in individual broadband providers' service territories.

The *Order*'s "$775 per location" performance obligation is based on several analogies and assumptions, none of which is apt. We address each in turn.

First, the *Order* states that the Commission developed the $775 threshold by "consider[ing] broadband deployment projects undertaken by a mid-sized price cap carrier under

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[21] Petitioners believe that nothing in the *Order* is incompatible with the Proposed Framework, and that reconsideration is not required. If the Commission disagrees, then Petitioners alternatively request reconsideration of the *Order* to the extent necessary to effectuate the Proposed Framework.

[22] *Order* at ¶ 139. In addition to being unserved, locations used to satisfy this requirement must not be covered by existing capital improvement plans and/or merger commitments. *See id.* at ¶ 146.

the BIP program."[23] The Commission indicates that "[t]he average per-location cost of deployment for those projects … was $557…."[24] This comparison, however, is completely inapposite. As the Commission acknowledges in the *Order*, BIP was aimed at improving service to *under*served locations as well as deploying to *un*served locations.[25] In contrast, price cap providers taking CAF Phase I incremental support will be unable to satisfy the current performance obligation by bringing underserved locations to "full service" levels, even though (as detailed below) improvements to network facilities in underserved areas will very likely be necessary to enable service to unserved locations.

This distinction in types of locations that are eligible for support is important, as evidenced by confidential cost estimates submitted by Petitioners to the Commission in this proceeding. Frontier's cost estimate accounted for the substantial broadband deployments that the company has already undertaken as a result of its transaction with Verizon, which gave Frontier's engineering team a wealth of experience in determining the cost of broadband deployment across its territories.[26] Windstream's cost estimate was derived from (among other things) the company's prior review of possible BIP projects.[27] Both cost estimates greatly

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[23] *Id.* at ¶ 140.

[24] *Id.*

[25] *Id.*

[26] *See* Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, GC Docket No. 09-51 (filed Oct. 20, 2011).

[27] *See* Letter from Malena F. Barzilai, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, GC Docket No. 09-51 (filed Oct. 21, 2011).

exceeded the $775 standard.[28] The Commission should not altogether ignore these estimates for the sake of a more "simplified" approach,[29] particularly where that simplified approach could leave many price cap carriers' service areas—and customers—unserved.

Second, the *Order* considered the cost model developed by the OBI ("OBI Model") in connection with the National Broadband Plan.[30] As Petitioners have previously cautioned the Commission, the OBI Model underestimates both wireline and wireless broadband costs.[31] For example, the OBI's analysis did not address the full cost of maintaining and operating existing voice and broadband networks, including the costs of fulfilling any provider-of-last-resort obligations.[32]

But even putting aside concerns that predictions of the OBI Model understate true costs, the *Order*'s reliance on the OBI Model is misplaced. At best, the OBI Model computes costs for deployment to unserved areas on a nationwide basis, without accounting for a specific carrier's costs. Unserved territories within the United States experience a great range of cost conditions—as the *Order* acknowledges in discussing BIP cost estimates, costs per location "var[y] considerably."[33] Windstream, for instance, maintains an incumbent LEC service territory that averages less than 17 subscribers per square mile, while Frontier's post-Verizon-transaction

[28] Because this is a joint pleading, we do not state the confidential figures calculated by each company, but rather refer the Commission and its staff to the pleadings just cited.

[29] *Order* at ¶¶ 134, 143.

[30] *Id.* at ¶ 141.

[31] *See* Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 11 & Appendix (Jul. 12, 2010) ("July 2010 Windstream Comments").

[32] *See id.*

[33] *Id.* at ¶ 140.

territory averages about 29 subscribers per square mile. These figures compare to about 100 subscribers per square mile for the largest telecommunications providers. Densities such as these dramatically affect the cost of providing service. With large portions of their respective service territories located in less densely populated, more rural areas, the per-location investment required by Petitioners in currently unserved areas is significantly higher than the "median" figure predicted by the OBI Model. Reliance on a nationwide median (or mean) cost reflecting a nationwide cost curve is therefore fruitless.[34] The fact that some locations within another carrier's territory might be served for $400 or less does nothing for another carrier's consumers when that carrier's least-expensive unserved locations would cost $1,000 or more to serve. The latter carrier will still be unable to use any incremental funding.

Indeed, reliance on the OBI Model's $775 threshold punishes carriers who have deployed aggressively in their least-costly areas, as well as their would-be customers in more expensive areas. For example, Windstream has invested more than $700 million over the past five years to extend broadband to approximately 90 percent of its voice customer base, up from 76 percent in 2006. By 2013, Windstream will spend an additional $241.7 million ($60.4 million of its own money to complement $181.3 million through BIP) to deploy additional facilities in high-cost areas in 13 states and boost company wide broadband availability to approximately 93 percent. Frontier currently provides broadband to 92 percent of the households in its legacy service territory and faces commitments to deploy broadband to 85 percent of the households in the

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[34] According to the *Order*, the OBI Model "estimated that the median cost of upgrading existing unserved homes is approximately $650 to $750, with approximately 3.5 million locations whose upgrade cost is below that figure." *Id.* As the *Order* acknowledges in a footnote, however, the average (mean) cost to serve unserved locations is nearly double this figure—$1,300. In fact, the mean remains "much higher than the median cost" even when one excludes from consideration "the most expensive 1 percent of locations." *Id.* at n.225.

former Verizon territory (which had only 62 percent coverage upon their acquisition) by 2015.[35] Naturally, these deployments by Windstream and Frontier have focused principally on less-expensive unserved areas. As a result of these deployments, Petitioners now face costs per new location that substantially exceed those they would have faced had they not already invested so aggressively in broadband —costs not reflected by the OBI Model's averages.

Third, the *Order* claims that the $775 per location threshold is justified by the ABC Plan cost model,[36] and states that, using that model, "Commission staff estimated that the median cost of a brownfield deployment of broadband to low-cost unserved census blocks is $765 per location."[37] But the *Order* then immediately reveals that this calculation is based on a variety of unwarranted assumptions. For example, "[b]ecause of the focus on lower-cost areas, staff assumed that end-user revenue would meet or exceed ongoing costs, and therefore focused only on a subsidy for the initial investment."[38] This focus is untenable: As discussed above, Petitioners have already deployed service to their lower-cost areas, such that many or all remaining areas will require support for ongoing operational expenses, not only for one-time capital expenditures. Also, like the OBI Model, the ABC Plan cost model is used to estimate nationwide average costs—averages that fail to account for carriers' different service territory cost profiles or the extent to which carriers have already deployed in their lowest-cost areas.

The *Order*'s reliance on the ABC Plan cost model is further marred by its apparent use of the National Broadband Map to identify price cap carriers' "unserved" locations subject to cost

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[35] As noted above, areas covered by existing capital improvement plans and merger commitments are ineligible for CAF Phase I incremental support. *See id*. at ¶ 146.

[36] *See id.* at ¶ 142.

[37] *Id.* at ¶ 143.

[38] *Id.* at n.227.

estimation. Despite the best efforts of stakeholders, the National Broadband Map significantly understates existing wireline deployments—*i.e.*, it treats as unserved areas that wireline broadband providers do in fact serve.[39] These areas are likely to exhibit lower costs than truly unserved areas (as evidenced by the provider's choice to deploy there rather than elsewhere). Thus, an analysis that includes all areas deemed unserved with wireline broadband by the National Broadband Map will reflect unrealistically low costs for deploying wireline service to "unserved" locations.[40] By relying on the National Broadband Map to identify locations unserved by wireline broadband, the Commission has similarly ensured that cost estimates using the ABC Plan cost model (or any other model, for that matter) will understate the actual costs of deploying wireline service to new locations.

In sum, the $775 standard would fail to allocate limited funding equitably and in a manner that is responsive to the actual cost conditions of unserved areas. In fact, there are relatively few, if any, unserved areas left in Petitioners' service territories that can be reached for $775 or less. Any broadband deployment conditions associated with incremental funding must be commensurate with the actual costs of such deployments, and the variations among carriers must figure more prominently in that analysis.

To that end, Petitioners recommend a more targeted approach that reflects the cost conditions in individual price cap carriers' service territories, as well as the increasing costs of

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[39] *See, e.g., id.* at ¶ 146, n.231 ("We acknowledge that some have claimed that the National Broadband Map is not completely accurate.").

[40] For example, if a map identified five unserved locations, with predicted deployment costs of $500, $600, $700, $800, and $900, that pool would indicate mean (and median) per-location costs of $700—below the Commission's $775 threshold. But if, in fact, the first two locations were already served, the *true* mean (and median) per-location cost would be $800—above the threshold.

serving additional locations, and that accounts for the need to upgrade service in *under*served areas in order to reach *un*served locations. By adopting this approach, the Commission could stretch its limited Phase I support budget further—reaching more customers who now are unable to take advantage of the remote conferencing, online banking, and distance education that broadband access offers. Specifically, under the Petitioners' proposal, the Commission would calculate limits on each carrier's broadband deployment funding as follows:

1. The Commission would use the CostQuest Broadband Analysis Tool ("CQBAT") submitted with the ABC Plan[41] to generate a cost curve for each individual price cap carrier's service areas.[42]

2. Each recipient of Phase I price cap incremental support would certify to the Commission the number of access lines in its territory capable of providing broadband service. The Commission would use these figures and the carrier's total number of access lines to compute the percentage of the carrier's lines that lack broadband capability.[43]

3. The Commission would assume that the "served" locations are the lowest-cost locations in the carrier's territory. Thus, for example, if the Commission determines that a carrier currently provides broadband to 90 percent of the locations within its territory, the Commission would assume that the next location served will impose the costs reflected at the 90th percentile on the company's cost curve, the next location served would impose costs reflected at the next position on the cost curve, and so on.

4. Carriers would be allowed to spend Phase I incremental support on unserved and underserved area deployments, with per-location limits on a carrier's Phase I incremental support keyed to that carrier's costs for deploying broadband to the

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[41] Notably, the Commission relied in part on the CQBAT in supporting its blanket $775 figure. *Id.* at ¶ 142, n.227.

[42] The ABC Plan cost model is fully capable of calculating company-specific cost curves using the specific inputs required for each wire center.

[43] For those companies with preexisting broadband deployment commitments, such as merger commitments or BIP projects, the computation line would assume those commitments have been fulfilled. For example, Frontier has committed to serving 85 percent of the properties acquired from Verizon, so the computation would begin assuming that 85 percent of the acquired properties have been served.

> unserved locations in its service territory. A carrier could choose to spend all incremental support only on addressing unserved locations. Alternatively, it could choose to spend some of its incremental support on underserved locations, but per-location funding for underserved locations would be reduced as compared to per-location funding for unserved locations (e.g., by 10 percent) to account for existing broadband investment that may be leveraged when upgrading service.

This approach is superior to the Commission's blanket $775 assumption in at least three key respects: (1) it reflects a company's specific costs rather than presumed nationwide average costs; (2) it reflects the reality that costs associated with building out broadband to unserved locations rise as carriers reach higher levels of overall broadband availability; and (3) it accounts for the fact that underserved areas may require upgrades to broadband facilities before adjacent, unserved areas can be addressed with new broadband service.

There is good cause for the Commission to recognize that Phase I incremental support also should be made available for broadband deployments to "underserved" locations. To deploy broadband to customers in unserved areas, Petitioners will need to install fiber facilities and digital subscriber line access multipliers ("DSLAMs") along rural roads to reach closer to individual locations, and to extend service to these "second mile" areas, facility upgrades in *under*served areas may be required. In Petitioners' experience, this investment required to provide 4 Mbps downstream/1 Mbps upstream service to underserved areas may be very significant, because upgrading an underserved area will typically require construction of new fiber.[44] In underserved areas, 4 Mbps service provisioned over DSLAMs that are fed by copper is usually not a feasible alternative. Just as fiber needs to be constructed for unserved areas, upgrading facilities in underserved areas to provide 4 Mbps service requires the construction of

[44] Unlike copper loops, which lose the capacity to carry broadband service as they become longer, fiber can extend to distances of 50 miles without repeaters. In addition, fiber provides bandwidth capabilities that are several orders of magnitude greater than copper.

new fiber that overlays existing copper facilities. Additional DSLAMs or pair bonding may also be required to reduce the length of especially long copper loops, which are unsuitable for the provision of broadband. Thus, under Petitioners' proposal a carrier choosing to accept all (or a portion of) incremental funding would have the option of leveraging existing infrastructure in a cost-efficient manner by determining the amount of incremental support that is allocated to deployments in unserved and underserved areas.

Finally, consistent with Petitioners' proposal, the Commission should reconsider its requirement that a carrier accepting Phase I incremental support must certify that the locations to be served with the incremental support "are shown as unserved by fixed broadband on the then-current version of the National Broadband Map."[45] Though the National Broadband Map understates wireline broadband coverage, as discussed above, it may overstate broadband coverage by fixed wireless service. In light of these concerns, the Commission should permit carriers to qualify for Phase I incremental support for a particular area if they can certify that they possess (and are capable of providing) reasonable evidence that the area is "unserved," as defined by the Commission. Such an approach is consistent with the Commission's aim "to spur immediate broadband deployment to as many unserved locations as possible."[46]

For the foregoing reasons, Petitioners urge the Commission to reconsider and modify its "one location per $775" Phase I deployment requirement with the proposal described above.

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[45] New 47 C.F.R. § 54.312(b)(3). *See also Order* at ¶ 146.

[46] *Order* at ¶ 139.

III. THE COMMISSION SHOULD CLARIFY THAT CURRENT ORIGINATING ACCESS RATES—INCLUDING INTRASTATE RATES—REMAIN IN EFFECT FOR *ALL* CALLS THAT ORIGINATE ON THE PSTN.

To avoid creating new arbitrage opportunities and undermining the orderly development of a new transition regime for originating access rates, the Commission should clarify that the *Order* does not apply to, and is not intended to displace, intrastate originating access rates for PSTN-originated calls that are terminated over VoIP facilities. Section XII.C.3 of the *Order* explicitly declines to reduce both interstate and intrastate originating access rates for calls that originate on the PSTN, pending future adoption of a transition mechanism for these rates after a further rulemaking. The discussion in Section XIV.C of the *Order* on prospective intercarrier compensation obligations for VoIP-PSTN traffic should not be read to undermine this regime by flash-cutting intrastate origination rates for PSTN-originated calls to interstate levels where those calls are terminated by another carrier as VoIP.

However, if the Commission truly intended to flash-cut these rates to interstate levels—contrary to the ABC Plan that the Commission stated it supported in this instance—the Commission should reverse this misguided decision. Such an approach likely would motivate new arbitrage schemes. Moreover, the Commission has not addressed carriers' significant need for recovery of lost revenues that would result from a change in originating access rates.

A. The Commission's *Order* Explicitly Refrained from Reducing Originating Access Rates for PSTN-Originated Calls, Pending Adoption of a Transition and Alternative Recovery Mechanisms in a Future Rulemaking.

While expressing the belief that a bill-and-keep framework would "ultimately" govern originating access,[47] the Commission states that it is "limiting reform to terminating access

[47] *Id.* at ¶ 817.

charges at this time," given its intent to "further evaluate" other charges, including originating access.[48] The Commission, therefore, applies rate reductions only to the subject of terminating access rates, and ensures a "measured transition" by retaining and capping originating access rates pending its determination of how and when to transition those rates to bill-and-keep:

> 818. Notwithstanding this conclusion, we take immediate action to cap all interstate originating access charges and intrastate originating access charges for price cap carriers. Although we do not establish the transition for rate reductions to bill-and-keep in this Order, we seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges. Meanwhile, we prohibit carriers from increasing their originating interstate access rates above those in effect as the effective date of the rules. A cap on interstate originating access represents a first step as part of our measured transition toward comprehensive reform and helps to ensure that our initial reforms to terminating access are not undermined.[49]

The Commission further explains its intent—as well as the absence of facts in the current record that would be needed to support an immediate reduction in originating access rates—in launching the further rulemaking:

> 1298. *Origination*. … [The Order] provides on an interim basis that interstate originating switched access rates for all carriers are to be capped at current levels as of the effective date of the rules adopted pursuant to this Order. … We determine, therefore, that such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime. Below, we seek comment on that final transition for *all* originating access charges.
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> 1299. Beyond the interim steps set forth in the Order, we seek comment on the need for an additional multi-year transition for originating access as part of the final transition to bill-and-keep.

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[48] *Id.* at ¶ 739. *See also id.* at ¶ 1301 (noting that the existing record "do[es] not provide a sufficient basis for us to proceed at this time," and that further analysis is needed to determine "the legal basis for the Commission to provide or deny recovery for originating access").

[49] *Id.* at ¶ 818 (footnotes omitted).

> …. We seek comment on an appropriate schedule, and the timing of any necessary interim steps.
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> * * *
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> 1301. Although parties commented on the *August 3 Public Notice's* questions regarding ***possible recovery for originating access, the comments do not provide a sufficient basis for us to proceed at this time. Thus, we seek further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented.*** For instance, should any recovery be limited to those incumbent LECs that do not provide retail long distance through affiliates? In addition, we ask for comment on the legal basis for the Commission to provide or deny recovery for originating access.[50]

Moreover, as the Commission explicitly recognizes,[51] the preservation of originating access rates until the Commission completes a further rulemaking is exactly what much of the industry proposed in the ABC Plan and Joint Letter. The ABC Plan Coalition described the scope of its proposed reforms for originating access as follows:

> The Plan proposes to cap interstate and intrastate originating access and certain other intercarrier rates at current levels. The cap proposal is a reasonable measure, as any further reforms of those rates would likely make it more difficult to keep the access replacement fund at a manageable size. The ABC Plan does not call for reductions in originating access charges, and the Commission should not undermine support for the Plan by altering this aspect of the carefully-negotiated compromise.[52]

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[50] *Id.* ¶¶ 1298-1299, 1301 (footnotes omitted) (emphasis added).

[51] *See id.* ¶ 817 at n.1543 (citing ABC Plan).

[52] Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon and Windstream, Docket Nos. 10-90, et al., at 22 (August 24, 2011) (Joint Comments of ABC Plan Proponents) (footnotes omitted). *See also id.* at 26-27 (noting that "[t]he ABC Plan does not call for reductions in originating access charges," and "if the Commission *does* mandate such reductions, it will need to address rate rebalancing through potential end-user rate increases and additional recovery from the transitional access replacement mechanism").

Thus on its face, and in its expressed intent to follow the structure of the ABC Plan, the *Order* is clear in its purpose to not reduce (and only cap) existing interstate and intrastate originating access rates for PSTN-originated traffic until the Commission adopts transition and alternative recovery mechanisms for these charges.

B. The Commission Should Confirm That Its Discussion of VoIP-PSTN Traffic Is Not Intended To Contradict Its Measured Approach Toward Originating Access Rates.

The Commission appropriately recognizes that it needed to address "significant billing disputes and litigation"[53] concerning intercarrier compensation for VoIP-PSTN traffic—the vast majority of which involve rates for the *termination* of VoIP-PSTN calls.[54] In the *Order*, The Commission therefore establishes prospective default terminating rates for all VoIP-PSTN calls, effectively limiting terminating access rates for toll VoIP-PSTN calls to interstate levels (regardless of the call's jurisdiction) and terminating rates for non-toll VoIP-PSTN calls to reciprocal compensation rates.[55]

Nothing in the *Order* explicitly states that originating access rates applying to PSTN-originated intrastate calls cannot exceed interstate levels. On the contrary, as explained above, the Commission takes pains to preserve the status quo for ordinary originating access rates for calls originating on the PSTN while it develops a record on appropriate transition and recovery mechanisms for these charges in the further rulemaking. The parts of the *Order* capping and continuing intrastate access rates for the interim do not note any exception for traffic originated

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[53] *Order* at ¶ 937. *See also id.* at ¶¶ 938-39.

[54] *See, e.g., PAETEC Communications, Inc. v. CommPartners, LLC*, Case No. 10-8002 (appeal pending in D.C. Cir.) (arising from CommPartners' refusal to pay terminating access charges to PAETEC for VoIP-originated traffic).

[55] *See Order* at ¶ 944.

on the PSTN and terminated via VoIP. Moreover, the only portion of *Order*'s VoIP-PSTN discussion that addresses originating access rates with any specificity itself acknowledges that originating access rates are "subject to the phase-down and elimination of those charges *pursuant to a transition to be specified in response to the FNPRM*"[56]—in other words, that there is no intent to flash-cut these rates to interstate levels in the present *Order*.[57]

The Petitioners' reading of the *Order* also best comports with the Commission's stated intent to "adopt the approach" of the ABC Plan "for including [VoIP-PSTN] traffic within the scope of [the] intercarrier compensation framework for VoIP."[58] The ABC Plan proposed a carefully balanced compromise under which certain losses of intercarrier revenues could be absorbed or sufficiently replaced through alternative recovery mechanisms, as long as federal regulations did not mandate accompanying, additional rate reductions—including reductions in originating access rates. The ABC Plan, in particular, proposed retaining (and capping) current originating access rates,[59] and because it would have undermined support for a "carefully negotiated compromise," the ABC Plan proponents expressly noted that they declined to address

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[56] *Id.* at ¶ 961, n.1976.

[57] This clarification provides support for reading the accompanying sentence stating "toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates," *id*. at ¶ 961, to mean that toll VoIP-PSTN traffic will be subject, as applicable, to charges not more than (a) current originating access rates (as capped by the *Order*) and (b) terminating interstate access rates. In addition, if the Commission's intent were to subject all forms of VoIP-PSTN traffic to interstate access rates there would be no need to separately address "originating" and "terminating" interstate access rates in the accompanying sentence; instead, the *Order* only would need to state that toll VoIP-PSTN traffic will be subject to charges not more than "interstate access rates," with no delineation between charges for "originating" and "terminating" traffic.

[58] *Id.* at ¶ 941. *See also, e.g.*, *id.* at ¶¶ 940, n.1892, 948.

[59] ABC Plan, Attachment 1 at 11.

reductions in originating access charges.[60] Similarly, it was generally understood by commenters that the VOIP-PSTN access-rate solution that the ABC Plan proposed *did not* displace intrastate originating access rates for PSTN-originated toll calls. For example, in comments cited by the Commission,[61] Comcast described its understanding of the Plan as follows:

> Under the ABC Plan, the primary area of concern for traffic format identification is intrastate toll, *where VoIP-originated traffic would be assessed a potentially different access rate (interstate access) than TDM-originated traffic (intrastate access)***.** Thus, if the ABC Plan were adopted, parties would certify the percentage of their originating intrastate toll voice traffic that *originates in IP*.[62]

The Commission never expresses any intent to go beyond the ABC Plan's proposals for "VoIP-PSTN" traffic and reduce originating access rates for intrastate calls that originate on the PSTN.

Nevertheless, some parties are now alleging that the Commission's *Order* disrupted the status quo for originating access rates and mandated significant, immediate reductions to rates charged for traffic that originates on the PSTN and terminates in VoIP traffic. Such unfounded claims should be promptly rebutted. The Commission, in particular, should confirm that cap on and continuation of originating access charges, both intrastate and interstate, for price cap carriers applies to traffic that originates on the PSTN and terminates via VoIP. LECs may still charge intrastate access rates for intrastate calls originated on the PSTN, even if another LEC happens to terminate the calls on VoIP facilities. Failing to clarify this risks undermining the "measured transition" for originating access rates that the Commission intends[63] and causing the

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[60] *Id.*; Joint Comments of ABC Plan Proponents at 22.

[61] *See Order* at ¶ 963, n.1989.

[62] Comments of Comcast Corporation, Docket Nos. 10-90, *et al.*, at 20, n.57 (August 24, 2011) (emphases added).

[63] *Order* at ¶ 818.

very kind of "flash-cut," disruptive access rate reductions that the Commission is expressly seeking to avoid.[64]

C. If the *Order* Was Intended to Flash-Cut Intrastate Originating Access Rates on PSTN-Originated VoIP-PSTN Calls To Interstate Levels, The Commission Should Reconsider That Decision.

Petitioners, for the reasons articulated above, believe that the *Order* as drafted does not limit originating access rates for intrastate PSTN-originated VoIP-PSTN calls to interstate levels. But if the Commission disagrees, Petitioners respectfully request reconsideration of that decision. As described above, the Commission has acknowledged that it does not yet have an adequate factual record (nor has it yet articulated a legal theory) for reducing intrastate originating access rates, which is why it is appropriate to defer such reductions to the further rulemaking. The Commission also has stated no justification for treating one category of a LEC's PSTN-originated intrastate traffic—traffic for which payments have not been in dispute—differently from the rest.

Indeed, flash-cutting one category of intrastate originating access rates to interstate levels would create an internal contradiction in the *Order* and conflict with the Commission's goal of "a measured, predictable transition" and "transitional recovery" for lost access revenues.[65] Flash-cutting a single category of intrastate rates to interstate levels would invite new arbitrage schemes where the Commission has vowed to eliminate them.[66] Carriers originating calls on the PSTN know the jurisdiction of the traffic they originate but have no way to identify how the call

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[64] *Id.* at ¶¶ 802, 809, 870, 952.

[65] *See Order at* ¶ 917.

[66] *See, e.g.*, *id.* at ¶ 68 (noting that "we do not want … to create opportunities for regulatory arbitrage").

terminates—on the PSTN or via IP—and as a result would rely on another carriers' specified percentage of VoIP traffic. A disparity in originating rates for intrastate traffic terminating on the PSTN versus on an IP network would incent dishonest carriers to specify a larger percentage of VoIP-terminated traffic than actually exists to avoid paying intrastate access rates, which are typically higher than interstate rates.[67] Moreover, because the timing for comprehensive reform of originating access rates is uncertain, this arbitrage opportunity could go on indefinitely.[68] If the Commission intends in the *Order* to limit originating access rates for intrastate PSTN-originated VoIP-PSTN calls to interstate levels, it should reconsider that decision, which would create unlawful arbitrage where none previously existed, contravening the Commission's goal of "eliminating arbitrage and competitive distortions."[69]

Should the Commission choose to bar LECs from collecting intrastate originating access rates on PSTN-originated, VoIP-terminated intrastate toll traffic, the Commission, at the very least, would need to permit LECs to use the recovery mechanism to recover lost originating access revenues. As the ABC Plan made clear, any reduction in revenues from originating access charges—a measure that it did not recommend at this time—necessitates expansion of the recovery mechanism:

> The ABC Plan does not call for reductions in originating access charges, and the Commission should not undermine support for the Plan by altering this aspect of the carefully-negotiated compromise. In any event, if the Commission does mandate such

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[67] While the Commission provides for auditing of the VoIP percentage, *see id.* at ¶ 963, such audits are time-consuming and costly to both parties and leave ample opportunity for gaming due to enforcement difficulties.

[68] Though the *Order* creates a similar opportunity for terminating access charges, the negative effect is mitigated because all terminating rates will be at the interstate level within 18 months.

[69] *See Order* at ¶ 764.

> reductions, it will need to address rate rebalancing through potential end-user rate increases and additional recovery from the transitional access replacement mechanism — and adding funding requirements to the access replacement mechanism would threaten the USF budget at this time. Even where "the originating incumbent LEC's affiliate is offering the long distance service," there are many circumstances in which a reduction in originating access charges would cause a net loss of revenues for the LEC and its long-distance affiliate. The need to address such recovery is an important reason why the Commission should not reform originating access charges at this time.[70]

Accordingly, if the Commission upsets the compromise proposed in the ABC Plan and requires immediate reductions in intrastate originating access rates, the Commission must immediately reform the recovery mechanism as well (rather than await the further rulemaking), because the loss of revenues to Petitioners would be immediate.

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[70] Joint Comments of ABC Plan Proponents at 26-27 (footnote omitted).

IV. CONCLUSION

For the reasons discussed herein, the Commission should (1) clarify that it intended to adopt the Proposed Framework discussed above with respect to the assignment of CAF Phase I incremental support; (2) reconsider its "$775 per location" deployment mandate and replace it with a more targeted mechanism; and (3) clarify that it did not intend to displace intrastate originating access rates for PSTN-originated calls that are terminated over VoIP facilities.

Respectfully submitted,

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